REMARKS:

Claims 1-14 are currently pending in the Application.

Claims1-14 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctively claim the subject matter which Applicant regards as the invention, with objections being specific to claims 1 and 7.

Claims 1, 4-7, and 9 were rejected under 35 U.S.C. §102(e) as being anticipated by Afshari, U.S. Pat. No. 6,560,844 (2003).

Claims 2-3 were rejected under 35 U.S.C. §103(a) as being unpatentable over Afshari in view of Wascher, et al., U.S. Pat. No. 5,491,546 (1996).

Claim 10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Afshari in view of Smith, U.S. Pat. No. 6,591,537 (2003).

Claims 8 and 11-14 were indicated as being allowable if rewritten to overcome the §112 objections and to include claim limitations from other claims.

No Claims were allowed.

Examiner also objected to the declaration as being defective.

REGARDING EXAMINER'S §112 REJECTIONS BASED ON ENABLEMENT:

Applicant has amended the claims 1 and 7 to correct antecedent problems noted by Examiner and for the presently claimed invention to particularly point out and distinctly claim the subject matter of the invention in order to comply with the provisions of 35 U.S.C §112.

REGARDING EXAMINER'S §102 REJECTIONS BASED ON AFSHARI:

Applicant has examined the prior art submitted with Examiner's Office Action and, after careful consideration, has amended the claims to clearly distinguish the claimed invention over the prior art.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California,* 2 USPQ2d 1051, 1053 (Fed Cir. 1987). The identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.*, 9USPQ2d 1913, 1920 (Fed Cir. 1989).

It should be noted that Examiner pointed to the uncertain description of the "incomplete area" referenced in Claim 1 in his §112 rejections. Applicant apologizes for any misunderstanding the lack of descriptiveness caused. The terminology has been amended to specifically point out that the set of dots extends through the incomplete perimeter of the ring, into an area external of the ring. Ashfari does not teach this arrangement; instead, all the dots are set within the perimeter of an intact aiming ring. Neither does Afshari teach a set of dots "originating from the center of the aiming ring" as a ring has only one center and is also taught in claim 1. As such, Ashfari does not teach every element as set forth in the amended claim and rejection should be seen as overcome in light of this Amendment.

REGARDING EXAMINER'S §103 REJECTIONS BASED ON AFSHARI, SMITH AND WASCHER, ET AL.:

Applicant submits that to establish a *prima facie* case of obviousness under 35 U.S.C. § 103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in knowledge generally available to one of ordinary skill in the art, to

modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the cited prior art reference must teach or suggest all of the claim limitations. Furthermore, the suggestion to make the claimed combination and reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure.

In light of Applicant's amendment to claim 1 overcoming Afshari, Examiners §103 rejections should now be moot. However, Applicant would like to point out that in both cases of cited prior art, targeting objects increase in size and/or distance the lower on the reticule they are. This is expressly the opposite of what is taught by this Application and exactly what has been taught throughout the prior art. Examiner's citations are arguably more supportive of the fact that the invention as described in this Application is non-obvious as they suggest the exact opposite of what this invention teaches. Furthermore, the term "dot" is specifically defined in the specification as being an aiming "point" and these "dots" are to change size. Wascher, et al. does not feature dots changing size, but rather aiming rings, each with a uniform sized dot in its center, of varying size within a reticule.

REGARDING THE INVENTOR'S DECLARATION

The Applicant is stunned by Examiner's assertion that the oath/declaration is defective. Applicant has looked at the declaration on the imaged file wrapper in PAIR and finds nothing wrong with it compared to other oaths and declarations filed using the ePAVE software provided by the USPTO. Though, Examiner does make a point that there is no date field on the Declaration, nor is there any way to insert one in the Oath/Declaration in ePAVE. It seems that you have uncovered a legal glitch in the software, as a date field should be included in the ePAVE software oath/declaration. If Examiner needs some form of "outside complaint" to the powers that be for

such a change to be affected, then by all means Applicant will provide one. However, since Applicant did submit a Declaration as complete as possible with the USPTO provided software, Applicant will submit a new declaration if it is determined absolutely necessary but; if it is so determined, Applicant will protest any late fees charged.

Applicant submits that Claims 1-14 are now clearly allowable over the prior art and Applicant respectfully requests allowance of these Claims and the case passed for issue. If Examiner believes that a telephonic conference would facilitate the examination of this Application, or would resolve questions Examiner may have, please do not hesitate to call Applicant's Attorney at the contact information below.

Respectfully Submitted, Date: February 2, 2005

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